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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; MEMX LLC; Notice of Filing of a Proposed Rule Change to Adopt Rules to Govern the Trading of Options on the Exchange for a New Facility Called MEMX Options

May 4, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2022, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to adopt rules to govern the trading of options on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a series of rules in connection with MEMX Options, which will be a facility of the Exchange. MEMX Options will operate an electronic trading system developed to trade options (the "System") leveraging the Exchange's existing robust and resilient technology platform that it uses to operate its cash equities market today. The fundamental premise of the proposal is that the Exchange will operate its options market much as it operates its cash equities market today and in a manner similar to that of other options exchanges, with a simplified suite of conventional order types and functionality that is designed to provide for an efficient, robust, and transparent order matching process. Much of the proposed functionality for MEMX Options is substantially similar to that offered by other options exchanges, primarily Cboe BZX Exchange, Inc. ("BZX"). Thus, the Exchange proposes to adopt rules applicable to MEMX Options that are substantively identical or substantially similar to the approved rules of BZX applicable to the BZX options market ("BZX Options"), with certain proposed changes or omissions that are described below.

The System will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. All Exchange Members will be eligible to participate in MEMX Options provided that the Exchange specifically authorizes them to trade in the System. The System will provide a routing service for orders when trading interest is not present on MEMX Options and will comply with all applicable securities laws and regulations and the obligations of the Options Order Protection and Locked/Crossed Market Plan.

MEMX Options Members

Pursuant to the proposed rules in Chapter 17 (Participation on MEMX Options), the Exchange will authorize any Exchange Member who meets certain enumerated qualification requirements (any such Member, an “Options Member”) and any Options Member’s Sponsored Participants to obtain access to, and transact business on, MEMX Options.

There will be two types of Options Members – Options Order Entry Firms (“OEFs”) and Options Market Makers. OEFs will be those Options Members representing Customer Orders as agent on MEMX Options or trading as principal on MEMX Options. Options Market Makers will be those Options Members registered with the Exchange as Options Market Makers pursuant to proposed Rule 22.2. To become an Options Market Maker, an Options Member will be required to register by filing a written application. The Exchange will not place any limit on the number of entities that may become Options Market Makers, the number of appointments an Options Market Maker may have, or the number of Options Market Makers that may have appointments in a

class unless the Exchange determines to impose any such limit based on system constraints, capacity restrictions, or other factors relevant to protecting the integrity of the System. The Exchange will not impose any such limitations until it has submitted objective standards for imposing the limits to the Commission for its review and approval.

Options Market Makers will be required to electronically engage in a course of dealing reasonably calculated to contribute to the maintenance of fair and orderly markets. Among other things, an Options Market Maker would generally have to satisfy the following responsibilities and duties during trading: (1) on a daily basis maintain a two-sided market on a continuous basis in at least 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Options Market Maker's appointed classes are open for trading, excluding any adjusted series, any intraday add-on series on the day during which such series are added for trading, any Quarterly Option Series, and any series with an expiration of greater than 270 days;³ (2) enter a size of at least one contract for its best bid and its best offer; and (3) maintain minimum net capital in accordance with Commission and Exchange rules. Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties will subject the Options Market Maker to disciplinary action, suspension, or revocation of the Options Market Maker's registration as such or its appointment in one or more of its appointed options classes.

³ The Exchange notes that it also proposes to adopt provisions that exclude from the calculation of continuous quoting those times that an Options Market Maker is experiencing a technical failure or limitation, during a trading halt, suspension or pause in the underlying security, or when the underlying security is in a limit up-limit down state.

Options Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. Thus, an Options Market Maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.

Every Options Member shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Exchange Act⁴ or in FINRA. OEF's that transact business with Public Customers must at all times be members of FINRA. Pursuant to proposed Rule 17.2(g), every Options Member will be required to have at least one registered Options Principal who satisfies the criteria of that rule, including the satisfaction of a proper qualification examination. An OEF may only transact business with Public Customers if such Options Member also is an Options Member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Exchange Act⁵ pursuant to which such other exchange or association shall be the designated options examining authority for the OEF.

The proposed rules relating to qualification and participation on MEMX Options as an Options Member (including as an OEF and an Options Market Maker) are

⁴ 15 U.S.C. 78f(g).

⁵ 17 CFR 240.17d-2.

substantively identical to the relevant rules of BZX Options.⁶

As provided in proposed Rule 16.2, existing Exchange Rules applicable to the MEMX equities market contained in Chapters 1 through 15 of the Exchange Rules will apply to Options Members unless a specific Exchange Rule applicable to the MEMX Options market (proposed Chapters 16 through 29 of the Exchange Rules) governs or unless the context otherwise requires. Options Members can therefore provide sponsored access to the MEMX Options Exchange to a non-Member (i.e., a Sponsored Participant) pursuant to Rule 11.3 of the Exchange Rules.

Definitions

The Exchange proposes to define a series of terms under proposed Rule 16.1 (Definitions), which are to be used in proposed Chapters 16 to 29 relating to the trading of options contracts on the Exchange. Each of the terms defined in proposed Rule 16.1 is either identical or substantially similar to definitions included in BZX Rule 16.1.

The definitions under proposed Rule 16.1 are as follows:

- **ABBO.** The term “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (as defined in proposed Rule 27.1) and calculated by the Exchange based on market information the Exchange receives from OPRA.
- **Aggregate Exercise Price.** The term “aggregate exercise price” means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.
- **American-Style Option.** The term “American-style option” means an options contract that, subject to the provisions of proposed Rule 23.1 (relating to the

⁶ See BZX Rules, Chapters XVII and XXII.

cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.

- **Associated Person and Person Associated with an Options Member.** The terms “associated person” and “person associated with an Options Member” mean any partner, officer, director, or branch manager of an Options Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an Options Member or any employee of an Options Member.
- **Bid.** The term “bid” means a limit order to buy one or more options contracts.
- **Board.** The term “Board” means the Board of Directors of MEMX LLC.
- **Call.** The term “call” means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.
- **Capacity.** The term “Capacity” means the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order according to the specifications for MEMX Options.
- **Class of Options.** The terms “class” or “class of options” mean all options contracts with the same unit of trading covering the same underlying security or index.
- **Clearing Corporation and OCC.** The terms “Clearing Corporation” and “OCC” mean The Options Clearing Corporation.
- **Clearing Member.** The term “Clearing Member” means an Options Member

that is self-clearing or an Options Member that clears MEMX Options Transactions for other Members of MEMX Options.

- **Closing Purchase Transaction.** The term “closing purchase transaction” means a MEMX Options Transaction that reduces or eliminates a short position in an options contract.
- **Closing Writing Transaction.** The term “closing writing transaction” means a MEMX Options Transaction that reduces or eliminates a long position in an options contract.
- **Covered Short Position.** The term “covered short position” means (i) an options position where the obligation of the writer of a call option is secured by a “specific deposit” or an “escrow deposit” meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.
- **Customer.** The term “Customer” means a Public Customer or a broker-dealer.
- **Customer Order.** The term “Customer Order” means an agency order for the

account of a Customer.

- **Discretion.** The term “discretion” means the authority of a broker or dealer to determine for a Customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.
- **European-Style Option.** The term “European-style option” means an options contract that, subject to the provisions of proposed Rule 23.1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.
- **Exchange Act.** The term “Exchange Act” means the Securities Exchange Act of 1934, as amended, or Rules thereunder.
- **Exercise Price.** The term “exercise price” means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.
- **He, Him, and His.** The terms “he,” “him” and “his” are deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.
- **Index Option.** The term “index option” means an options contract that is an option on a broad-based, narrow-based or micro narrow-based index of equity securities prices.
- **Individual Equity Option.** The term “individual equity option” means an options contract which is an option on an equity security.
- **Long Position.** The term “long position” means a person’s interest as the holder of one or more options contracts.

- **MEMX Exchange and Exchange.** The terms “MEMX Exchange” and “Exchange” mean MEMX LLC.
- **MEMX Exchange Rules and Exchange Rules.** The terms “MEMX Exchange Rules” and “Exchange Rules” mean the rules of the Exchange, including those for equities and options.
- **MEMX Options.** The term “MEMX Options” means the MEMX LLC Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.
- **MEMX Options Book.** The term “MEMX Options Book” means the electronic book of options orders maintained by the Trading System.
- **MEMX Options Transaction.** The term “MEMX Options Transaction” means a transaction involving an options contract that is effected on or through MEMX Options or its facilities or systems.
- **NBB, NBO, and NBBO.** The term “NBB” means the national best bid, the term “NBO” means the national best offer, and the term “NBBO” means the national best bid or offer as calculated by MEMX Options based on market information received by MEMX Options from OPRA.
- **Offer.** The term “offer” means a limit order to sell one or more options contracts.
- **OPRA.** The term “OPRA” means the Options Price Reporting Authority.
- **Opening Purchase Transaction.** The term “opening purchase transaction” means a MEMX Options Transaction that creates or increases a long position in an options contract.
- **Opening Writing Transaction.** The term “opening writing transaction” means a

MEMX Options Transaction that creates or increases a short position in an options contract.

- **Options Contracts.** The term “options contract” means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.
- **Options Market Close and Market Close.** The terms “options market close” and “market close” mean the time the Exchange specifies for the end of a trading session on the Exchange on that trading day.
- **Options Market-Maker and Market-Maker.** The terms “Options Market-Maker” and “Market-Maker” mean an Options Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in proposed Chapter 22.
- **Options Market Open and Market Open.** The terms “options market open” and “market open” mean the time the Exchange specifies for the beginning of a trading session on the Exchange on that trading day.
- **Options Member.** The term “Options Member” means a firm, or organization that is registered with the Exchange pursuant to proposed Chapter 17 for purposes of participating in options trading on MEMX Options as an “Options Order Entry Firm” or “Options Market-Maker.”
- **Options Member Agreement.** The term “Options Member Agreement” means the agreement to be executed by Options Members to qualify to participate on MEMX Options.

- **Options Order Entry Firm, Order Entry Firm, and OEF.** The terms “Options Order Entry Firm” and “Order Entry Firm” or “OEF” mean those Options Members representing as agent Customer Orders on MEMX Options and those non-Market-Maker Members conducting proprietary trading.
- **Options Principal.** The term “Options Principal” means a person engaged in the management and supervision of the Options Member’s business pertaining to options contracts that has responsibility for the overall oversight of the Options Member’s options related activities on the Exchange.
- **Order.** The term “order” means a firm commitment to buy or sell options contracts as defined in proposed Rule 21.1(c).
- **Outstanding.** The term “outstanding” means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.
- **Primary Market.** The term “primary market” means, in the case of securities listed on Nasdaq Stock Market, LLC (“Nasdaq”), the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape Association Plan.
- **Priority Customer and Priority Customer Order.** The term “Priority Customer” means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term “Priority Customer Order” means an

order for the account of a Priority Customer.

- **Professional.** The term “Professional” means any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members.
- **Protected Quotation.** The term “Protected Quotation” has the meaning provided in proposed Rule 27.1.⁷
- **Public Customer.** The term “Public Customer” means a person that is not a broker or dealer in securities.
- **Put.** The term “put” means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.
- **Quarterly Options Series.** The term “Quarterly Options Series” means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.
- **Quote and Quotation.** The terms “quote” and “quotation” mean a bid or offer

⁷ As defined in proposed Rule 27.1, the term “Protected Quotation” refers to a Protected Bid or Protected Offer, and the terms “Protected Bid” and “Protected Offer” refer to a Bid or Offer in an options series, respectively, that: (A) is disseminated pursuant to the OPRA Plan; and (B) is the highest priced Bid or lowest priced Offer, respectively, displayed by an Eligible Exchange.

entered by a Market-Maker as a firm order that updates the Market-Maker's previous bid or offer, if any.

- **Responsible Person.** The term “Responsible Person” means a U.S.-based officer, director, or management-level employee of an Options Member, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Member.
- **Rules of MEMX Options.** The term “Rules of MEMX Options” mean the rules contained in proposed Chapters 16 to 29 of the MEMX LLC Exchange Rules governing the trading of options on the Exchange.
- **Rules of the Clearing Corporation and Rules of the OCC.** The terms “Rules of the Clearing Corporation” and “Rules of the OCC” mean the Certificate of Incorporation, the By-Laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as may be in effect from time to time.
- **SEC and Commission.** The terms “SEC” and “Commission” mean the United States Securities and Exchange Commission.
- **Series of Options.** The terms “series” or “series of options” mean all options contracts of the same class that are the same type of options and have the same exercise price and expiration date.
- **Short Position.** The term “short position” means a person's interest as the writer of one or more options contracts.
- **Short Term Option Series.** The term “Short Term Option Series” means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday,

Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

- **SRO.** The term “SRO” means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.
- **Trading System and System.** The terms “Trading System” and “System” mean the automated trading system used by MEMX Options for the trading of options contracts.
- **Type of Option.** The term “type of option” means the classification of an options contract as either a put or a call.
- **Uncovered.** The term “uncovered” means a short position in an options contract that is not covered.
- **Underlying Security.** The term “underlying security” means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.
- **User.** The term “User” means any Options Member or Sponsored Participant

who is authorized to obtain access to the System pursuant to Rule 11.3 (Access).

Execution System

The Exchange's options System will leverage the Exchange's current state-of-the-art technology, including its customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure. This approach minimizes the technical effort required for existing Exchange Members to begin trading options on MEMX Options. As a result, MEMX Options will closely resemble the Exchange's equities market, as well as other options markets, such as BZX Options, that offer true price/time priority across all participants rather than differentiating between participant/trading interest.

Like the Exchange's system for equities, as well as the BZX Options market, all trading interest entered into the System will be automatically executable. Orders entered into the System will be displayed anonymously. Thus, the System will offer anonymous trading, however, options trades are not currently anonymous through settlement. Accordingly, as set forth in proposed Rule 21.10, aggregated and individual transaction reports produced by the System will indicate the details of a User's transactions, including the contra party's executing firm ID ("EFID"), capacity, and clearing firm account number.⁸ The Exchange will become an exchange member of the Options Clearing Corporation ("OCC"). The System will be linked to OCC for the Exchange to

⁸ The Exchange shall also reveal a User's identity: (i) when a registered clearing agency ceases to act for a participant, or the User's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the User's trades; and (ii) for regulatory purposes or to comply with an order of an arbitrator or court. See proposed Rule 21.10. The Exchange notes that proposed Rule 21.10 is identical to BZX Rule 21.10.

transmit locked-in trades for clearance and settlement.

Hours of Operation. As stated in proposed Rule 21.2, the MEMX Options System will begin accepting orders after 9:30 a.m. Eastern Time pursuant to the market opening procedures described in proposed Rule 21.7. Orders and bids and offers shall be open and available until 4:00 p.m. Eastern Time except for option contracts on Fund Shares, as defined in proposed Rule 19.3(i), option contracts on exchange-traded notes including Index-Linked Securities, as defined in proposed Rule 19.3(l), and option contracts on broad-based indexes, as defined in proposed Rule 29.1(j), which may close as of 4:15 p.m. Eastern Time. The proposed hours of operation on MEMX Options are the same as on BZX Options, except that BZX Options begins accepting orders at 7:30 a.m. Eastern Time that are then processed in the BZX Options opening process beginning at 9:30 a.m. Eastern Time.

Units of Trading. As stated in proposed Rule 21.3, the unit of trading in each series of options traded on MEMX Options will be the unit of trading established for that series by the OCC pursuant to the rules of the OCC and the agreements of the Exchange with the OCC. The proposed determination of the unit of trading for a series of options traded on MEMX Options is the same as on BZX Options pursuant to BZX Rule 21.3.

Minimum Quotation and Trading Increments. As stated in proposed Rule 21.5(a), the Exchange is proposing to apply the following quotation increments: (1) if the options series is trading at less than \$3.00, five (5) cents; (2) if the options series is trading at \$3.00 or higher, ten (10) cents; and (3) if the options series is trading pursuant to the Penny Interval Program one (1) cent if the options series is trading at less than \$3.00, five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQQ,

SPY, or IWM where the minimum quoting increment will be one (1) cent for all series. In addition, as stated in proposed Rule 21.5(b), the Exchange is proposing that the minimum trading increment for options contracts traded on MEMX Options will be one (1) cent for all series. Such proposed minimum quotation and trading increments are the same as on BZX Options pursuant to BZX Rules 21.5(a) and (b).

Penny Interval Program. As set forth in proposed Rule 21.5(d), the Exchange is proposing to adopt a Penny Interval Program that is substantially similar to the penny programs of other exchanges, including BZX Options pursuant to BZX Rule 21.5(d), which includes minimum quoting requirements for option classes listed under the Penny Interval Program. However, eligibility for inclusion in the Penny Interval Program will be limited to those classes already operating under penny programs of other options exchanges at the time MEMX Options is launched. The list of option classes included in the Penny Interval Program will be announced by the Exchange via circular distributed to Options Members and published by the Exchange on its website.

Order Types and Handling Instructions. The System will make available to Users two Order Types (as defined in proposed Rule 21.1(d))—Limit Orders and Market Orders—as well as various other instructions and modifiers that can be appended to such orders. The characteristics and functionality of each Order Type is substantially similar to what is currently approved for use in the Exchange’s equities trading facility or on other options exchanges, including BZX Options, except where described below. MEMX Options will support bulk messages for Options Market Makers as specified in the description of each Order Type or other instruction. Proposed Rule 21.1(d) includes the following details with respect to Limit Orders and Market Orders:

- **Limit Order.** Limit Orders are orders (including bulk messages) to buy or sell an option at a specified price or better. A Limit Order is marketable when, for a Limit Order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a Limit Order to sell, at the time it is entered into the System, the order is priced at the current inside bid or lower.
- **Market Order.** Market Orders are orders to buy or sell at the best price available at the time of execution. Market Orders to buy or sell an option traded on MEMX Options will be rejected if they are received when the underlying security is subject to a “Limit State” or “Straddle State” as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan”). Bulk messages may not be Market Orders.

The System will also make available to Users several additional instructions that can be designated on an order (“Handling Instructions”). A Handling Instruction applied to a bulk message applies to each bid and offer within that bulk message. The Handling Instructions available on MEMX Options are described in proposed Rule 21.1(e) and will include the following:

- **Book Only.** Book Only is an instruction that an order is to be ranked and executed on the Exchange pursuant to proposed Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange. Users may designate bulk messages as Book Only as set forth in proposed Rule 21.1(l).
- **Post Only.** Post Only is an instruction that an order is to be ranked and executed

on the Exchange pursuant to proposed Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange except that the order will not remove liquidity from the MEMX Options Book. The Exchange notes that, unlike a Post Only Order on BZX Options, an order with a Post Only instruction on MEMX Options will not remove liquidity even if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the MEMX Options Book and subsequently provided liquidity.⁹ A Market Order cannot be designated as Post Only.¹⁰ Users may designate bulk messages as Post Only as set forth in proposed Rule 21.1(l).

- **Intermarket Sweep Order (“ISO”).** ISOs are orders that shall have the meaning provided in proposed Rule 27.1, which relates to intermarket trading. Such orders may be executed at one or multiple price levels in the System without regard to Protected Quotations at other options exchanges (i.e., may trade through such quotations). The Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Options Member’s

⁹ The Exchange notes that other options exchanges offer functionality equivalent to the Post Only instruction that does not remove liquidity based on potential price improvement. See, e.g., NYSE Arca Rule 6.62-O.(t) and NYSE Arca Rule 6.62P-O(e)(2), each of which defines an ALO Order, which is an order that does not remove liquidity from the NYSE Arca order book without any exception for removing liquidity when price improvement could be obtained.

¹⁰ The Exchange notes that the comparable description of Post Only Orders on BZX Options in BZX Rule 21.1(d)(8) does not specify that Market Orders cannot be designated as Post Only, however, the Exchange believes the proposed functionality is the same.

responsibility, not the Exchange's responsibility, to comply with the requirements relating to ISOs. ISOs are not eligible for routing pursuant to proposed Rule 21.9. A Market Order cannot be designated as an Intermarket Sweep Order.¹¹ Users may not designate bulk messages as ISOs.

The Exchange notes that, in contrast to BZX Options, it has proposed characterizing Book Only, Post Only, and ISO as Handling Instructions rather than Order Types, as each of these instructions represents an additional modifier that can be appended to a Market Order or Limit Order rather than a unique Order Type. The Exchange does not believe that this characterization changes anything with respect to the proposed operation of the Exchange but rather is a more accurate characterization of the proposed functionality. The Exchange notes that each of the proposed Order Types and Handling Instructions available on MEMX Options is substantially similar to the same order type available on BZX Options, except where described above or as relates to the display-price sliding process offered by BZX Options, which the Exchange is not proposing to adopt. The Exchange also notes that BZX Options offers additional order types, such as reserve orders, minimum quantity orders, price-improving orders, stop orders, and stop limit orders, none of which the Exchange proposes to adopt.

Time-in-Force Designations. Users entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. A

¹¹ The Exchange notes that the comparable description of ISOs on BZX Options in BZX Rule 21.1(d)(9) does not specify that Market Orders cannot be designated as ISOs, however, the Exchange believes the proposed functionality is the same.

Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. Unless otherwise specified in the Exchange Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis. The Time-in-Force designations available on MEMX Options are described in proposed Rule 21.1(f) and will include the following:

- **Immediate Or Cancel (“IOC”).** IOC means, for an order so designated, an order that is to be executed in whole or in part as soon as such order is received. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the MEMX Options Book. IOC orders that are not designated as Book Only and that cannot be executed in accordance with proposed Rule 21.8 on the System when reaching the Exchange will be eligible for routing away pursuant to proposed Rule 21.9. Users may designate bulk messages as IOC.
- **Day.** Day means, for an order so designated, an order to buy or sell which, if not executed expires at market close. Users may designate bulk messages as Day.

The Exchange notes that each of the proposed Time-in-Force designations available on MEMX Options is identical to the same Time-in-Force designation available on BZX Options, except that BZX Options rules describe Time-in-Force designations as applicable only to limit orders on BZX Options, whereas the Exchange has proposed allowing such designations to be placed on both Limit Orders and Market Orders. The Exchange also notes that BZX Options offers additional Times-in-Force, such as good til cancelled, fill-or-kill, at the open, limit-on-close, and market-on-close, none of which the Exchange proposes to adopt.

Member Match Trade Prevention Modifiers. As with its equities market, the Exchange will allow Users to use certain Match Trade Prevention (“MTP”) modifiers, which are described in proposed Rule 21.1(g). Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same EFID, Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier. The Exchange will offer the following MTP modifiers: MTP Cancel Newest, described in proposed Rule 21.1(g)(1); MTP Cancel Oldest, described in proposed Rule 21.1(g)(2); and MTP Cancel Both, described in proposed Rule 21.1(g)(3). The Exchange notes that each of the proposed MTP modifiers available on MEMX Options is identical to the same MTP modifier available on BZX Options. The Exchange also notes that BZX Options offers additional MTP modifiers, such as MTP Decrement and Cancel and MTP Cancel Smallest, neither of which the Exchange proposes to adopt.

Re-Pricing Mechanism. Like other options exchanges, the Exchange proposes to offer a re-pricing mechanism to Users to comply with the order protection and trade through restrictions of the Options Order Protection and Locked/Crossed Market Plan. This re-pricing mechanism, described in proposed Rule 21.1(i), is referred to by the Exchange as Price Adjust and is identical to the Price Adjust mechanism offered by BZX Options pursuant to BZX Rule 21.1(i), with the exception of the handling of an order with a Post Only instruction subject to the Price Adjust process. Whereas BZX Options applies the Price Adjust process when a Post Only Order locks or crosses a Protected Quotation displayed on BZX Options and re-prices such Post Only Order pursuant to BZX Rule 21.1(i)(4), the Exchange is not proposing to adopt this clause and instead

would cancel a Post Only Order that locks or crosses a Protected Quotation displayed on MEMX Options. As noted above, the Exchange is not proposing to offer a re-pricing mechanism equivalent to the display-price sliding process offered by BZX Options.

EFIDs. As proposed in Rule 21.1(j), the term “EFIDs” means Executing Firm IDs and shall refer to what the System uses to identify the User and the clearing number for the execution of orders and quotes submitted to the System with that EFID. A User may obtain one or more EFIDs from the Exchange (in a form and manner determined by the Exchange). The Exchange assigns an EFID to its Users. Each EFID corresponds to a single User and a single clearing number of a Clearing Member with the Clearing Corporation. A User may obtain multiple EFIDs, which may be for the same or different clearing numbers. A User is able (in a form and manner determined by the Exchange) to designate which of its EFIDs may be used for each of its ports. If a User submits an order or quote through a port with an EFID not enabled for that port, the System cancels or rejects the order or quote. The Exchange notes that its proposed Rule 21.1(j) is identical to BZX Rule 21.1(k) other than the use of the term “User” instead of “Member.”

Ports and Bulk Messages. Proposed Rule 21.1(k) defines two types of ports: (1) a “physical port,” which provides a physical connection to the System and may provide access to multiple logical ports; and (2) a “logical port” or “application session,” which provides Users with the ability within the System to accomplish a specific function through a connection, such as order entry, data receipt, or access to information. The Exchange notes that each of the proposed types of ports available on MEMX Options is identical to the same types of ports on BZX Options, though instead of application session BZX Options also refers to logical ports as logical sessions. The Exchange also

notes that BZX Options offers specific ports used for bulk messages whereas the Exchange proposes to offer bulk message functionality through the same logical ports as Users submit other messages to the Exchange. Other than this distinction, the Exchange proposes to adopt the same bulk message functionality as is offered by BZX Options. The term “bulk message” is proposed to mean a bid or offer included in a single electronic message a User submits with a Market Maker Capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers (which number the Exchange will announce via Exchange notice or publicly available technical specifications). The System handles a bulk message in the same manner as it handles an order or quote, unless the Exchange Rules specify otherwise.¹² Users may submit bulk messages through a logical port, subject to the following: bulk messages must contain a Time-in-Force of Day or IOC; a Market Maker with an appointment in a class must designate a bulk message for that class as Post Only or Book Only, and a non-appointed Market Maker must designate a bulk message for that class as Post Only; the System cancels or rejects a Post Only bulk message bid (offer) with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB); the System executes a Book Only bulk message bid (offer) that locks or crosses the ABO (ABB) against offers (bids) resting in the Book at prices the same as or better than the ABO (ABB) and then cancels the unexecuted portion of that bid (offer).

¹² The Exchange notes that BZX Options maintains the definition of bulk message in BZX Rule 16.1 whereas MEMX Options has proposed to include this language in proposed Rule 21.1(l), where bulk messages are further described. Despite this distinction, as noted above, the functionality is the same other than the fact the Exchange does not propose to require a separate bulk port to submit bulk messages.

Cancel Back. The term “Cancel Back” is proposed to mean an instruction a User designates on an order (including bulk messages) to not be subject to the Price Adjust process pursuant to proposed Rule 21.1(i). The System cancels or rejects an order with a Cancel Back instruction (immediately at the time the System receives the order or upon return to the System after being routed away) if displaying the order on the Book would create a violation of proposed Rule 27.3, or if the order cannot otherwise be executed or displayed in the Book at its limit price. The System executes a Book Only – Cancel Back order against resting orders. The proposed definition of Cancel Back in proposed Rule 21.1(m) is substantively identical to a Cancel Back Order defined in BZX Rule 21.1(m), except as relates to the display-price sliding process offered by BZX Options, which the Exchange is not proposing to adopt, and the fact that the Exchange has not proposed to execute an order with a Post Only instruction to the extent there is price improvement associated with such execution (including if such order also has a Cancel Back instruction).¹³

Market Opening Procedures. As stated in proposed Rule 21.7, the System shall open options, other than index options, for trading based on the first transaction after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan. With respect to index options, the System shall open for trading after a time period (which the Exchange determines for all classes) following the System’s observation after 9:30 a.m. Eastern Time of the first disseminated index value for the index underlying an index option. Because the Exchange does not propose to adopt an opening cross or similar opening

¹³ See supra note 9 and accompanying text.

process, the opening trade that occurs on the Exchange will be a trade in the ordinary course of dealings on the Exchange. Accordingly, the System will ensure that the opening trade in an options series will not trade through a Protected Quotation at another options exchange, consistent with the general standard regarding trade throughs articulated in proposed Rule 21.6(e). The proposed market opening procedures for options other than index options are identical to the market opening procedures for such options that were initially adopted by BZX Options.¹⁴ The proposed market opening procedures for index options are substantially similar to the market opening procedures for index options on BZX Options under current BZX Rule 21.7(d)(2) with respect to when the System opens. However, once the BZX Options system observes that an index value has been disseminated for the applicable index BZX Options then commences an opening rotation (i.e., an opening process to match liquidity at a price determined by the BZX Options system) while the Exchange does not currently propose to adopt an opening process. Additionally, the Exchange proposes that it may delay the commencement of trading in any class of options in the interests of a fair and orderly market. As stated in proposed Rule 21.6(c), orders received prior to the opening of the System will be cancelled. The Exchange believes that it is appropriate to commence operations on MEMX Options with simplified procedures for when the System is open for trading because for a successful opening process to function, an exchange needs a critical mass of liquidity from market participants in order to price and execute opening transactions.

¹⁴ See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish Rules Governing the Trading of Options on the BATS Options Exchange).

In turn, as a new options exchange, MEMX Options does not know the amount of pre-opening interest it will have, and it will have to gain market share in order to accumulate such interest. MEMX Options will re-evaluate its opening procedures over time and may propose to add an opening process through a rule filing submitted to the Commission in the future.

Order Display/Matching System. The System will be based upon functionality currently approved for use in the Exchange's equities trading system. Specifically, the System will allow Users to enter Market Orders and priced Limit Orders to buy and sell MEMX Options-listed options. All orders (including bulk messages) will be designated for display (price and size) on an anonymous basis by the Exchange.

Routing. The MEMX Options Exchange will support orders that are designated to be routed to the National Best Bid and Offer ("NBBO") as well as orders that will execute only within MEMX Options. Orders that are designated to execute at the NBBO will be routed to other options markets to be executed when the Exchange is not at the NBBO consistent with the Options Order Protection and Locked/Crossed Market Plan. Subject to the exceptions contained in proposed Rule 27.2(b), the System will ensure that an order will not be executed at a price that trades through another options exchange. An order that is designated by an Options Member as routable will be routed in compliance with applicable trade-through restrictions. Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the price adjust process as defined in proposed Rule 21.1(i) will be cancelled. Bulk messages are not eligible for routing.

The proposed routing functionality for MEMX Options is designed to operate

much like the routing functionality for the Exchange's equities market, in that the Exchange offers a simple routing service to facilitate compliance with applicable regulations and does not currently offer other complex routing strategies. The Exchange notes that the proposed rules relating to the routing of orders on MEMX Options to away options markets are similar to the approved rules of BZX Options, except that the Exchange proposes to cancel any unexecuted portion of a Market Order after the System has routed to and received response from an away options market, whereas BZX Options offers additional handling instructions that may be chosen with respect to the unexecuted portion of an order after the System has routed to and received response from an away options market, and BZX Options offers various additional routing options, such as routing to a specific destination or at specified price levels.¹⁵

MEMX Options shall route orders in options via MEMX Execution Services LLC ("MEMX Execution Services"), which serves as the Outbound Router of the Exchange, as defined in Rule 2.11. The function of the Outbound Router will be to route orders in options listed and open for trading on MEMX Options to other options exchanges pursuant to the proposed rules of MEMX Options solely on behalf of MEMX Options. The Outbound Router is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Act. Use of MEMX Execution Services or Routing Services (as defined below) to route orders to other market centers is optional. In the event the Exchange is not able to provide order routing services through its affiliated broker-dealer, the Exchange will route orders to other options exchanges in conjunction with one or more routing brokers that are not affiliated

¹⁵ See BZX Rule 21.9.

with the Exchange (“Routing Services”). Parties that do not desire to use MEMX Execution Services or other Routing Services provided by the Exchange must designate orders as not available for routing.

In connection with the proposed rules regarding routing to away options exchanges, proposed Rule 21.9(f) provides that MEMX Execution Services has, pursuant to Rule 15c3-5 under the Act,¹⁶ implemented certain tests designed to mitigate the financial and regulatory risks associated with providing the Exchange’s Users with access to such away options exchanges. Pursuant to the policies and procedures developed by MEMX Execution Services to comply with Rule 15c3-5, if an order or series of orders are deemed to be erroneous or duplicative, would cause the entering User’s credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in Rule 15c3-5), MEMX Execution Services will reject such orders prior to routing and/or seek to cancel any orders that have been routed. This is consistent with the routing implementation of other options exchanges, and the Exchange notes that proposed Rule 21.9(f) is substantively identical to BZX Rule 21.9(f).

Order Priority. The System, like the Exchange’s equities facility, shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Trading interest will be executed with the order clearly established as the first entered into the System at each price level having priority up to the number of contracts specified in the order. Any order entered with a price that would lock or cross a

¹⁶ 17 CFR 240.15c3-5.

Protected Quotation that is not eligible for either routing or the price adjust process as defined in proposed Rule 21.1(i) will be cancelled. The Exchange notes that the proposed price/time order priority and book processing is substantially similar to that on BZX Options.

Data Feed. The System will include a proprietary data feed which will display without attribution to Users' orders on both the bid and offer side of the market for price levels then within MEMX Options using the minimum price variation applicable to that security.

Risk Controls. The Exchange also proposes to offer to all Users of MEMX Options the ability to establish certain risk control parameters and limits that are intended to assist Users in managing their market risk. The proposed risk controls are set forth in proposed Rules 21.16 and 21.17 and are based, in part, on those of BZX Options, with certain additions and differences described below. The proposed risk controls are designed to offer Users protection from entering orders outside of certain size and price parameters, as well as certain standard or Exchange-established parameters based on order type and market conditions.

The Exchange proposes to offer a Risk Monitor Mechanism described in proposed Rule 21.16 that features passive risk counter functionality, which is similar to the risk monitor mechanism functionality offered by other options exchanges, including BZX Options, as well as active risk counter functionality. Under the proposed Risk Monitor Mechanism, Users may configure risk limits for various parameters, including number of contracts executed ("volume"), notional value of executions ("notional"), number of executions ("count"), number of contracts executed as a percentage of number

of contracts outstanding within an Exchange-designated time period or during the trading day (“percentage”), and the number of times the limits on any of the foregoing parameters are reached (“risk trips”). The System will track each of the parameters within an underlying for an EFID (“underlying limit”), across all underlyings for an EFID (“EFID limit”), across all underlyings for a group of EFIDs (“EFID Group”) (“EFID Group limit”), and/or across a customized group of orders designated by the User (“Custom Group Limit”), over a User-established time period (“interval”) and on an absolute basis for a trading day (“absolute limits”).

When the System determines that a specified parameter has reached the User-defined risk limit, depending on the User’s instructions and the applicable limit that has been reached, the Risk Monitor Mechanism either: (1) cancels or rejects such User’s orders or quotes in all series of the applicable underlying(s) and cancels or rejects any additional orders or quotes from the User in the applicable underlying(s) until the counting program resets; or (2) suspends all of a User’s resting orders or quotes in all series of the applicable underlying(s) and cancels or rejects any additional orders or quotes from the User in the applicable underlying(s) until the Exchange is instructed to reinstate such bids and offers. A User may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in proposed Rule 22.10 (“mass cancellation”) or to suspend all resting bids and offers until the Exchange is instructed to reinstate such bids and offers (“mass suspension”).

The proposed Risk Monitor Mechanism functionality described above is substantially similar to the risk monitor mechanism offered on BZX Options, except that BZX Options does not permit Users to designate a Custom Group Limit to track risk

parameters across a customized group of orders, nor does BZX Options permit Users to choose to suspend, rather than cancel or reject, resting orders when a risk limit has been reached or to engage the Risk Monitor Mechanism for mass suspension as an alternative to mass cancellation. The Exchange believes that these proposed additions to the Risk Monitor Mechanism functionality that is currently available on BZX Options would provide Users with greater optionality when managing their risk on MEMX Options.

The proposed Risk Monitor Mechanism functionality described above is similar to the Risk Monitor Mechanism functionality offered by other options exchanges, including BZX Options, in that it provides for the System to track specified risk parameters across designated underlyings and/or order groups until the counting program is reset by the User (such functionality, the “passive risk counter”). In addition to the Risk Monitor Mechanism’s passive risk counter functionality, which is similar to the Risk Monitor Mechanism functionality offered by BZX Options in BZX Rule 21.16, the Exchange also proposes to enable a User to optionally manage their risk limits actively using the Exchange’s proposed active risk counter functionality within the Risk Monitor Mechanism. As proposed, for a User using the active risk counter, the System will increment the active risk counter associated with a defined parameter when such parameter increments, and the System will decrement the active risk counter upon positive confirmation from the User via an electronic instruction that the User has acknowledged a change in the active risk counter. A User would also be able to specify the value by which each parameter increments and decrements in the active risk counter. The proposed active risk counter therefore enables a User to interact with the Risk Monitor Mechanism dynamically such that the User may actively acknowledge

executions and decrement the counting program by a specified amount as such executions occur (or at any time), rather than waiting until a risk limit is reached or the User otherwise sends a specific instruction to the Exchange to completely reset the counting program.

The following examples illustrate the proposed behavior of the passive risk counter and the active risk counter within the Risk Monitor Mechanism. In each case, assume a User configures a risk limit of 10,000 contracts executed with respect to options contracts on underlying security ABC for a single EFID.

Passive Risk Counter

- The System executes User's order to purchase 5,000 call options on ABC ("Transaction 1"). The System's counting program would increment to a total of 5,000 executed options contracts on ABC for the User.
- The System then executes User's order to purchase 3,000 call options on ABC ("Transaction 2"). The System's counting program would increment an additional 3,000 executed options contracts for Transaction 2 to a total of 8,000 executed options contracts on ABC for the User.
- The System then executes User's order to purchase 3,000 call options on ABC ("Transaction 3"). The System's counting program would increment an additional 3,000 executed options contracts for Transaction 3 to a total of 11,000 executed options contracts on ABC for the User. As Transaction 3 results in executions in excess of the User's risk limit with respect to the number of options contracts executed, the Risk Monitor Mechanism is triggered, and the System will cancel, reject or suspend, as

applicable in accordance with the User's instructions, the User's orders and quotes in all series of options contracts on ABC for the User.

- The User then submits an electronic instruction to the System to reset the counting program, and the counting program is decremented to zero. The System will now accept new orders or quotes from the User in a series of options contracts on ABC.

Active Risk Counter

- The System executes a transaction to purchase 5,000 call options on ABC ("Transaction 1"). The System's counting program would increment to a total of 5,000 executed options contracts on ABC for the User.
- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due to Transaction 1. Upon the System's receipt of such instruction, the counting program decrements the active risk counter by 5,000 options contracts for Transaction 1 to a total of zero with respect to the number of executed options contracts on ABC for the User.
- The System then executes two separate transactions to purchase 3,000 call options on ABC per transaction ("Transaction 2" and "Transaction 3" respectively), and the User does not acknowledge a change in the active risk counter due to either of these executions. The System's counting program would increment 3,000 executed options contracts at the time of

execution for each of Transaction 2 and Transaction 3, for a total of 6,000 executed options contracts on ABC for the User.

- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due Transaction 3, but not Transaction 2. Upon the System's receipt of such instruction, the counting program would decrement the active risk counter by the 3,000 executed options contracts for Transaction 3 to a total of 3,000 executed options contracts on ABC for the User.
- The User then executes a transaction to purchase 10,000 call options on ABC ("Transaction 4"). The System's counting program would increment an additional 10,000 executed options contracts for Transaction 4 to a total of 13,000 options contracts on ABC for the User. As Transaction 4 results in executions in excess of the User's risk limit with respect to the number of options contracts executed, the Risk Monitor Mechanism is triggered, and the System will cancel, reject or suspend, as applicable in accordance with the User's instructions, the User's orders and quotes in all series of options contracts on ABC for the User.
- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due to Transaction 4. Upon the System's receipt of such instruction, the counting program would decrement the active risk counter by the 10,000 executed options contracts for Transaction 4 to a total of 3,000 executed options contracts

on ABC for the User. The System will now accept new orders or quotes from the User in a series of options contracts on ABC.

In addition to the Risk Monitor Mechanism functionality described above, the Exchange also proposes to offer additional price protection mechanisms and risk controls that relate to certain standard or Exchange-established parameters based on order type and market conditions, which are described in proposed Rule 21.17. These additional price protection mechanisms and risk controls are substantially similar to those offered on BZX Options pursuant to BZX Rule 21.17, with slight modifications to align with the Exchange's proposed market opening procedures and available order types and instructions on MEMX Options, except that the Exchange is proposing a simplified version of the drill-through price protection mechanism described in proposed Rule 21.17(d). Whereas the drill-through price protection mechanism offered on BZX Options pursuant to BZX Rule 21.17(d) executes an incoming order to a determined "Drill-Through Price" and then displays the remainder of the order on BZX Options at that price for a brief period of time, the Exchange has proposed to simply cancel the remainder of an incoming order after executing the order to the Drill-Through Price.

One Second Exposure Period. Proposed Rule 22.11 would require Options Members to expose their customers' orders on the Exchange for at least one second under certain circumstances. During this one second exposure period, other Options Members will be able to enter orders to trade against the exposed order. In adopting a one second order exposure period, the Exchange is proposing a requirement that is consistent with

the rules of other options exchanges.¹⁷ Thus, the exposure period will allow Options Members that are members of other options exchanges to comply with proposed Rule 22.11 without programming separate time parameters into their systems for order entry or compliance purposes. The Exchange believes that market participants are sufficiently automated that a one second exposure period allows an adequate time for market participants to electronically respond to an order. Also, it is possible that market participants might wait until the end of the exposure period, no matter how long, before responding. Thus, the Exchange believes that any longer than one second would not further the protection of investors or market participants, but rather, would potentially increase market risk to investors and other market participants by creating a longer period of time for the exposed order to be subject to market risk.

Options Order Protection and Locked/Crossed Market Plan Rules

The Exchange will participate in the Options Order Protection and Locked/Crossed Market Plan (the “Plan”), and therefore will be required to comply with the obligations of Participants under the Plan. The Exchange proposes to adopt rules relating to the Plan that are substantially similar to the rules in place on all of the options exchanges that are Participants to the Plan. The Plan essentially applies the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan requires the Plan Participants to adopt rules “reasonably designed to prevent Trade-Throughs”, while exempting ISOs from that prohibition. The Plan’s definition of an ISO is essentially the same as under Regulation NMS. The remaining exceptions to the trade-

¹⁷ See, e.g., BZX Rule 22.12; CBOE Rule 5.9; MIAX Options Rule 520(b); BOX Rule IM-7140-3.

through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both.

The proposed rules in Chapter 27 (Options Order Protection and Locked and Crossed Markets Rules) conform to the requirements of the Plan. Proposed Rule 27.1 sets forth the defined terms for use under the Plan. Proposed Rule 27.2 prohibits trade-throughs and exempts ISOs from that prohibition. Proposed Rule 27.2 also contains additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to unique aspects of the options market, or both.

Proposed Rule 27.3 sets forth the general prohibition against locking/crossing other eligible exchanges as well as certain enumerated exceptions that permit locked markets in limited circumstances; such exceptions have been approved by the Commission for inclusion in the rules of other options exchanges. Specifically, the exceptions to the general prohibition on locking and crossing occur when: (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; or (3) the Options Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The Exchange notes that the proposed rules in Chapter 27 (Options Order Protection and Locked and Crossed Markets Rules) are substantively identical to the rules of BZX Options.¹⁸

Securities Traded on MEMX Options

¹⁸ See BZX Rules, Chapter XXVII.

General Listing Standards. The Exchange proposes to adopt listing standards for options traded on MEMX Options as described in Chapter 19 (Securities Traded on MEMX Options), as well as for index options as described in Chapter 29 (Index Rules), which are substantively identical to the approved rules of BZX Options.¹⁹ The Exchange will join the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. The Exchange will gradually phase-in its trading of options, beginning with a selection of actively traded options. At least initially, the Exchange does not plan to develop new options products or listing standards.

Conduct and Operational Rules for Options Members

The Exchange proposes to adopt rules for MEMX Options that are substantively identical to the rules of BZX Options regarding: exercises and deliveries as described in Chapter 23 (Exercises and Deliveries); records, reports and audits as described in Chapter 24 (Records, Reports and Audits); minor rule violations as described in Chapter 25 (Discipline and Summary Suspensions); doing business with the public as described in Chapter 26 (Doing Business With the Public); and margin as described in Chapter 28 (Margin Requirements).²⁰

National Market System

MEMX Options will operate as a full and equal participant in the national market

¹⁹ See BZX Rules, Chapters XIX and XXIX. The Exchange notes that it is initially proposing to adopt rules applicable to listing and trading of index options but has not proposed inclusion of references to any specific index options products or indices at this time and therefore has included a placeholder with the rule text “(Reserved.)” where such references would otherwise be. To the extent the Exchange does propose to list and trade certain index products in the future, the Exchange will file a proposed rule change with the Commission with respect to such products.

²⁰ See BZX Rules, Chapters XXIII, XXIV, XXV, XXVI and XXVIII.

system for options trading established under Section 11A of the Exchange Act,²¹ just as its equities market participates today. MEMX Options will become a member of the Options Price Reporting Authority (“OPRA”), the Options Linkage Authority (“OLA”), the Options Regulatory Surveillance Authority (“ORSA”), and the Options Listing Procedures Plan (“OLPP”). The Exchange expects to participate in those plans on the same terms currently applicable to current members of those plans. The Exchange has contacted the leadership of each options-related national market system plan to begin the membership process.

Regulation

The Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.²² As described in more detail below, there will be three elements of that regulation: (1) the Exchange will join the existing options industry agreements pursuant to Section 17(d) of the Exchange Act,²³ as it did with respect to equities; (2) the Exchange’s Regulatory Services Agreement with FINRA will govern many aspects of the regulation and discipline of Members that participate in options trading, just as it does for equities regulation; and (3) the Exchange will perform options listing regulation, as well as authorize Options Members to trade on MEMX Options, and conduct surveillance of options trading as it does today for equities. Section 17(d) of the Exchange Act and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to

²¹ 15 U.S.C. 78k-1.

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78q(d).

avoid duplicative oversight and regulation. Under Exchange Act Rule 17d-1,²⁴ the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because MEMX Options Members also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.

Exchange Act Rule 17d-2²⁵ permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO ("common members"). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.

All of the options exchanges, FINRA, and NYSE have entered into the Options Sales Practices Agreement, a Rule 17d-2 agreement. Under this Agreement, the examining SROs will examine firms that are common members of the Exchange and the particular examining SRO for compliance with certain provisions of the Exchange Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain proposed MEMX Options rules. In addition, the proposed MEMX Options rules contemplate participation in this Agreement by requiring that any Options Member also

²⁴ 17 CFR 240.17d-1.

²⁵ 17 CFR 240.17d-2.

be a member of at least one of the examining SROs.

For those regulatory responsibilities that fall outside the scope of any Rule 17d-2 agreements, the Exchange will retain full regulatory responsibility under the Exchange Act. However, the Exchange has entered into a Regulatory Services Agreement with FINRA, pursuant to which FINRA personnel operate as agents for the Exchange in performing certain of these functions. As is the case with the Exchange's equities market, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for the MEMX Options Exchange.

Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of MEMX Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to MEMX Options. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MEMX Options.

Finally, as it does with equities, the Exchange will perform automated surveillance of trading on MEMX Options for the purpose of maintaining a fair and orderly market at all times. As it does with its equities trading, the Exchange will monitor MEMX Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and

administering the Exchange’s process for identifying and remediating “obvious errors” by and among its Options Members. The proposed rules in Chapter 20 (Regulation of Trading on MEMX Options) regarding halts, unusual market conditions, extraordinary market volatility, obvious errors, and audit trail are substantively identical to the approved rules of BZX Options, with the exception that Exchange does not propose to include rules permitting certain off-floor transfers of options traded on MEMX Options.²⁶

Minor Rule Violation Plan

The Exchange’s disciplinary rules, including Exchange Rules applicable to “minor rule violations,” are set forth in Chapter 8 of the Exchange’s current Rules. Such disciplinary rules will apply to Options Members and their associated persons.

The Commission approved the Exchange’s Minor Rule Violation Plan (“MRVP”) in 2020.²⁷ The Exchange’s MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Act²⁸ requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.²⁹ The

²⁶ See BZX Rules, Chapter XX.

²⁷ See Release No. 34-89836 (September 11, 2020), 85 FR 58081 (September 17, 2020) (Order Declaring Effective a Minor Rule Violation Plan) (“MRVP Order”).

²⁸ 17 CFR 240.19d-1(c)(1).

²⁹ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Release No. 34-21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

Exchange's MRVP includes the policies and procedures included in Exchange Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and in Exchange Rule 8.15, Interpretations and Policy .01.

The Exchange proposes to amend its MRVP and Exchange Rule 8.15, Interpretation and Policy .01 to include proposed Rule 25.3 (Penalty for Minor Rule Violations).³⁰ The rules included in proposed Rule 25.3 as appropriate for disposition under the Exchange's MRVP are: (a) position limit and exercise limit violations; (b) violations regarding the failure to accurately report position and account information; (c) Market Maker quoting obligations; (d) violations regarding expiring exercise declarations; (e) violations relating to the failure to respond to the Exchange's requests for the submission of trade data; and (f) violations relating to noncompliance with the Consolidated Audit Trail Compliance Rule requirements. The rules included in proposed Rule 25.3 are the same as the rules included in the MRVPs of other options exchanges.³¹

Upon implementation of this proposal, the Exchange will include the enumerated options trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1),

³⁰ In its proposal to adopt the MRVP, the Exchange requested that, going forward, to the extent that there are any changes to the rules applicable to the Exchange's MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange's MRVP.

³¹ See, e.g., BZX Rules, Chapter XXV.

6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.³² In addition, because amended Rule 8.15 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 25.3, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.³³

This proposal to include the rules listed in proposed Rule 25.3 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,³⁴ because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a

³² 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

³³ 15 U.S.C. 78f(b)(7).

³⁴ 17 CFR 240.19d-1(c)(2).

formal disciplinary action.

Amendments to Existing Exchange Rules

In addition to the rules of MEMX Options proposed above, the Exchange proposes to amend certain of its existing Exchange Rules that currently apply to the Exchange's equities market in order to reflect the Exchange's proposed operation of MEMX Options.

First, the Exchange proposes to amend paragraph (d) of Interpretations and Policies .01 to Rule 2.5 (Restrictions), which generally requires each Member to register at least two Principals with the Exchange subject to certain exceptions described therein, to provide that such paragraph (d) shall not apply to a Member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in proposed Rule 17.2(g). The Exchange notes that proposed Rule 17.2(g), which provides that every Options Member shall have at least one Options Principal and sets forth the Exchange's Options Principal registration requirements, is identical to BZX Rule 17.2(g). In connection with this proposed change, the Exchange also proposes to amend paragraph (i) of Interpretations and Policies .01 to Rule 2.5 to include Options Principal as a registration category and to set forth the Exchange's qualification requirements for an Options Principal, which are the same as those for an Options Principal on BZX Options.

The Exchange also proposes to delete the word "equities" in the first sentence of Rule 2.7 (Revocation of Membership or Association with a Member), which currently provides that Members or associated persons of Members may effect approved equities securities transactions on the Exchange's trading facilities only so long as they possess all

the qualifications set forth in the Exchange Rules. Thus, such proposed change is intended to make this statement no longer limited to equities securities transactions, as options transactions may also be effected on the Exchange pursuant to this proposal.

Lastly, the Exchange proposes to amend Interpretations and Policies .01 Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules), which contains the list of Exchange Rule violations and recommended fine schedule pursuant to Rule 8.15, to include a new paragraph (i) referencing proposed Rule 25.3 for the recommended fines for minor rule violations of the Exchange Rules applicable [sic] to MEMX Options, which the Exchange notes are the same as those of BZX Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act³⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the fundamental premise of the proposal is that the Exchange will operate its options market much as it operates its cash equities market today and in a

³⁵ 15 U.S.C. 78f(b).

³⁶ 15 U.S.C. 78f(b)(5).

manner similar to that of other options exchanges, with a simplified suite of order types and deterministic functionality leveraging the Exchange's existing robust and resilient technology platform. The Exchange believes MEMX Options will benefit individual investors, options trading firms, and the options market generally by providing an additional competitive dynamic to the options landscape, thereby promoting further initiative and innovation among market centers and market participants. The entry of an innovative, cost competitive market such as MEMX Options will promote competition, spurring existing exchanges to improve their own executions systems and reduce trading costs.

The Exchange proposes to offer a simplified suite of conventional order types and order type modifiers and other instructions that are designed to provide for an efficient, robust, and transparent order matching process. The basis for a majority of the proposed rules of MEMX Options are the approved rules of other options exchanges, primarily BZX Options, which have already been found consistent with the Exchange Act. Therefore, the Exchange does not believe that any of the proposed order types and order type functionality raise any new or novel issues that have not been previously considered by the Commission.

In few instances where the Exchange proposes functionality that differs from that of other options exchanges, it has done so to simplify and/or to improve upon an existing process. For instance, the Exchange believes the proposed operation of the Exchange's Risk Monitor Mechanism described in Rule 21.16, including the proposed functionality in addition to that provided under BZX Rule 21.16, removes impediments to and perfects the mechanism of a free and open market and a national market system by offering Users

additional ways to establish and monitor risk parameters consistent with their overall approach to risk management. Specifically, the following additional proposed features with respect to its Risk Monitor Mechanism would provide Users with greater optionality when managing their risk on MEMX Options: (i) the ability to designate a Custom Group Limit to track risk parameters across a customized group of orders, (ii) the ability to suspend, rather than cancel or reject, resting orders when a risk limit has been reached, (iii) the ability to engage the Risk Monitor Mechanism for mass suspension as an alternative to mass cancellation, and (iv) the ability to utilize the proposed active risk counter to actively acknowledge executions, rather than waiting until a risk limit is reached or the counting program is completely reset. Additionally, the Exchange believes proposed Rule 21.17, which contains standard and Exchange-determined risk controls based on order type and market conditions that are the same as other options exchanges, as well as a simplified version of the drill-through price protection mechanism, removes impediments to and perfects the mechanism of a free and open market and a national market system by imposing risk controls that are designed to prevent orders from executing at prices inconsistent with the current market.

The Exchange further believes that the functionality that it proposes to offer is consistent with Section 6(b)(5) of the Act because the System is designed to be efficient and its operation transparent, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open national market system. As described above, the Exchange's proposed rules, including the proposed Order Types and Handling Instructions, opening procedures, routing services, and order matching process are designed to provide a simplified suite of conventional features and

to comply with all applicable regulatory requirements, including the obligations of the Options Order Protection and Locked/Crossed Market Plan.

The Exchange believes that the proposed rules of MEMX Options, as well as the proposed method of monitoring for compliance with and enforcing such rules is also consistent with the Exchange Act, particularly Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. The Exchange has proposed to adopt rules necessary to regulate Options Members that are nearly identical to the approved rules of other options exchanges, as described above. The Exchange proposes to regulate activity on MEMX Options in the same way it regulates activity on its equities market, specifically through various Exchange specific functions, an RSA with FINRA, as well as participation in industry plans, including plans pursuant to Rule 17d-2 under the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest

number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency.

Consolidation amongst U.S. options exchanges has led to concentration of ownership by certain exchange groups, thereby diminishing the competitive landscape among options exchanges. This proposal will enhance competition by allowing the Exchange to leverage its existing robust technology platform to provide a resilient, deterministic, and transparent execution platform for options. The proposed rule change will insert an additional competitive dynamic to the options landscape by allowing the Exchange to compete with existing options exchanges and will promote further initiative and innovation among market centers and market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 90 days of the date of publication of this notice in the Federal Register, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.³⁷

³⁷ In its filing, MEMX consented to an extension of time for Commission action to ninety (90) days after the date of publication of the proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MEMX-2022-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2022-10, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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³⁸ 17 CFR 200.30-3(a)(12).